RECORD AND BRIEF

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In the

Supreme Court of the United States

CHRISTOPHER J. CHRISTIE,
Governor of New Jersey, et al.,

Petitioners,

v.

NATIONAL COLLEGIATE
ATHLETIC ASSOCIATION, et al.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

AMICUS BRIEF OF PACIFIC LEGAL FOUNDATION, COMPETITIVE ENTERPRISE INSTITUTE, AND CATO INSTITUTE IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Can the federal government circumvent this Court's commandeering cases, including *New York v. United States*, 505 U.S. 144 (1992), by prohibiting states from repealing their own laws that promote federal objectives, long after states and their voters have rejected them?

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IDENTITY AND INTEREST OF AMICI CURIAE

Pacific Legal Foundation (PLF), Competitive Enterprise Institute (CEI), and the Cato Institute respectfully submit this amicus brief in support of the Petitioners Governor of the State of New Jersey, David L. Rebuck, Frank Zanzuccki, New Jersey Thoroughbred Horsemen's Association, Inc., and New Jersey Sports & Exposition Authority.[1]

Founded in 1973, PLF defends limited government, property rights, and free enterprise in courts nationwide. PLF has extensive experience litigating constitutional and free enterprise issues as counsel and amicus curiae in this Court. *See, e.g.*, *Murr v. Wisconsin*, No. 15-214 (*cert. granted* Jan. 15, 2016); *Friedrichs v. Cal. Teachers Ass'n*, 136 S. Ct. 1083 (2016) (mem.); *Christie v. N.C.A.A.*, 134 S. Ct. 2866 (*cert. denied* June 23, 2014); *Printz v. United States*, 521 U.S. 898 (1997); *New York v. United States*, 505 U.S. 144 (1992).

The Competitive Enterprise Institute (CEI) is a nonprofit 501(c)(3) organization, incorporated and headquartered in Washington, D.C., dedicated to promoting the principles of free markets and limited

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[1] Pursuant to this Court's Rule 37.2(a), all parties have consented to the filing of this brief. Counsel of record for all parties received notice at least 10 days prior to the due date of amici's intention to file this brief. Letters evidencing such consent have been filed with the Clerk of the Court.

Pursuant to Rule 37.6, amici affirm that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amici curiae, their members, or their counsel made a monetary contribution to its preparation or submission.

government. Since its founding in 1984, CEI has focused on raising public understanding of the problems of overregulation. It has done so through policy analysis, commentary, and litigation. In the last decade it has been extensively involved in the issue of federal gambling regulation, producing numerous studies and op-eds, and submitting testimony to Congressional committees—all aimed at enhancing consumer freedom and reducing the prevalence of black markets.

The Cato Institute was established in 1977 as a nonpartisan public policy research foundation dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Center for Constitutional Studies was established in 1989 to promote the principles of limited constitutional government that are the foundation of liberty. Toward those ends, Cato publishes books and studies, conducts conferences, produces the annual *Cato Supreme Court Review*, and files *amicus* briefs.

This case is of central concern to *amici* because the anti-commandeering doctrine is essential to preserving federalism and, thereby, protecting individual liberty. *Amici* believe their legal and public policy experience will assist this Court in its consideration of this case.

INTRODUCTION AND SUMMARY OF REASONS FOR GRANTING THE PETITION

A federal statute compels New Jersey to continue prohibiting sports gambling, thus requiring the state to hold long after its voters decided to fold. In ruling that this does not run afoul of the prohibition against federal commandeering of states, the Third Circuit

decided an important question of federal law that has not been, but should be, settled by this Court. *See N.C.A.A. v. Governor of New Jersey*, 832 F.3d 389 (3d Cir. 2016). The Third Circuit's opinion undermines federalism and thereby threatens individual liberty by significantly limiting the scope of this Court's commandeering decisions. *See Printz v. United States*, 521 U.S. 898 (1997); *New York v. United States*, 505 U.S. 144 (1992).

The Professional and Amateur Sports Protection Act (PASPA) forbids states from "authoriz[ing]" sports gambling "by law." 28 U.S.C. § 3702. The Third Circuit interpreted this prohibition to bar states not just from affirmatively licensing sports gambling, but also from repealing or modifying their preexisting state prohibitions. *See N.C.A.A.*, 832 F.3d at 396-97. Accordingly, PASPA compels states to regulate their citizens according to Congress' instructions. The Third Circuit held that PASPA does not violate the anti-commandeering doctrine, however, because it does not require the states to enact prohibitions but instead to maintain existing prohibitions. *Id.* at 401-02 ("PASPA does not command states to take any affirmative actions[.]").

The petition raises an important question of federal law as the anti-commandeering doctrine is a key structural protection for federalism. *New York v. United States*, 505 U.S. at 161-66. In addition to maintaining the proper relationship between the federal government and the states, it protects individual liberty and promotes political accountability. *Id.* at 182-83. The importance of these constitutional issues calls for this Court to resolve the scope of the anti-commandeering doctrine.

The question presented is not merely important for academic or doctrinal reasons. PASPA reaches a broad range of sports gambling, with significant economic and social impacts. States need clear guidance from this Court about their valid regulatory options so that they may determine how best to protect and promote the interests of their residents.

REASONS FOR GRANTING THE PETITION

I

THE COURT SHOULD GRANT THE PETITION TO RESOLVE AN IMPORTANT QUESTION OF FEDERAL LAW

A. The Scope of the Anti-Commandeering Doctrine Is an Important Question That Should Be Resolved by This Court

"[T]he Constitution has never been understood to confer upon Congress the ability to require the States to govern according to Congress' instructions." *New York*, 505 U.S. at 162; *see Brown v. E.P.A.*, 521 F.2d 827, 839 (9th Cir. 1975), *vacated as moot*, 431 U.S. 99 (1977) ("states" cannot be "reduce[d] . . . to puppets of a ventriloquist Congress"). Thus, Congress may not "commandeer" states by compelling them to implement federal policy. *New York*, 505 U.S. at 161.

This anti-commandeering doctrine imposes important limits on federal power and protects core constitutional values. "[T]he preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as

the preservation of the Union and the maintenance of the National government." *Texas v. White*, 74 U.S. (7 Wall.) 700, 725 (1868). Federalism, and the values it protects, could be down for the count if the federal government could impose its will on state governments. *See New York*, 505 U.S. at 162-63; *Tafflin v. Levitt*, 493 U.S. 455, 458 (1990).

The Third Circuit's decision would limit the anti-commandeering doctrine by excluding from its reach cases where the federal government requires states to implement federal policy by forbidding them from changing pre-existing state laws. *See N.C.A.A.*, 832 F.3d at 401-02. If limited in this way, the anti-commandeering doctrine could easily be circumvented. *See infra* pages 12-14. In light of the important constitutional values advanced by the anti-commandeering doctrine, this Court should grant certiorari to determine its proper scope.

1. The Anti-Commandeering Doctrine Strengthens Federalism

"As every schoolchild learns, our Constitution establishes a system of dual sovereignty between the States and the Federal Government." *Gregory v. Ashcroft*, 501 U.S. 452, 457 (1991). Federalism provides decentralized government "sensitive to the diverse needs of a heterogenous society; it increases opportunity for citizen involvement in democratic processes; it allows for more innovation and experimentation in government; and it makes government more responsive by putting the States in competition for a mobile citizenry." *Id.* at 458; *see* Michael W. McConnell, *Federalism: Evaluating the Founders' Design*, 54 U. Chi. L. Rev. 1484, 1491-1511 (1987).

Federalism is not just an end in itself. Rather, it "is one of the Constitution's structural protections of liberty." *Printz*, 521 U.S. at 921; *see also Gregory*, 501 U.S. at 459 ("In the tension between federal and state power lies the promise of liberty."); The Federalist No. 51, at 323 (James Madison) (J. Cooke ed., 1961). Although it might seem counterintuitive, "freedom is enhanced by the creation of two governments." *Alden v. Maine*, 527 U.S. 706, 758 (1999). "By denying any one government complete jurisdiction over all the concerns of public life, federalism protects the liberty of the individual from arbitrary power." *Bond v. United States*, 564 U.S. 211, 222 (2011).

As a vital component of federalism, the anti-commandeering doctrine advances individual liberty. It limits federal power by requiring the federal government to internalize the costs of its policies, rather than shifting them to the states. *See* Bridget A. Fahey, *Consent Procedures and American Federalism*, 128 Harv. L. Rev. 1561, 1598 (2015); Brian Galle, *Does Federal Spending "Coerce" States? Evidence from State Budgets*, 108 Nw. U. L. Rev. 989, 996 (2014).

Federalism also promotes political accountability. *See FTC v. Ticor Title Ins. Co.*, 504 U.S. 621, 636 (1992); *see also United States v. Lopez*, 514 U.S. 549, 576 (1995) (Kennedy, J., concurring). The anti-commandeering doctrine promotes political accountability at both the federal and state levels by ensuring that voters hold the correct politicians accountable for unpopular policies. *See New York*, 505 U.S. at 182-83; Fahey, *supra* at 1598. If commandeering were allowed, state officials might take the fall for unpopular policies over which they have no control. Andrew B. Coan, *Commandeering*,

Coercion, and the Deep Structure of American Federalism, 95 B.U. L. Rev. 1, 8 (2015). Likewise, it would permit federal politicians to claim credit for addressing a serious national problem, while foisting the difficult questions of how to do so and at what cost on state officials. *Id.*; *see also* Vicki C. Jackson, *Federalism and the Uses and Limits of Law: Printz and Principle?*, 111 Harv. L. Rev. 2180, 2201 (1998). "The resultant inability to hold either branch of the government answerable to the citizens is more dangerous even than devolving too much authority to the remote central power." *Lopez*, 514 U.S. at 577 (Kennedy, J., concurring).

Federalism also provides a means to discover better public policies through experimentation. *See San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1, 49-50 (1973); *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting) (describing states as "laboratories" which could experiment with novel solutions to vexing problems). If the federal government could commandeer the states, it could undermine this experimentation by imposing one-size-fits-all policies on states. *See* Deborah Jones Merritt, *Three Faces of Federalism: Finding a Formula for the Future*, 47 Vand. L. Rev. 1563, 1581 (1994) ("To put it bluntly, we need long-term sources of regulatory creativity more than we need short-term efficiency.").

To preserve federalism, it is incumbent on the judiciary to determine the proper boundaries between federal and state power. *See Gregory*, 501 U.S. at 460-61; John C. Yoo, *The Judicial Safeguards of Federalism*, 70 S. Cal. L. Rev. 1311, 1404 (1997) ("An absence of judicial review . . . over federalism questions

would abort the Framers' design."). "[T]he federal balance is too essential a part of our constitutional structure and plays too vital a role in securing freedom for us to admit inability to intervene when one or the other level of Government has tipped the scales too far." *Lopez*, 514 U.S. at 578 (Kennedy, J., concurring). Recognizing this importance, this Court has intervened when the federal government jumped offsides and commandeered states or their officials. *See Printz*, 521 U.S. 898; *New York*, 505 U.S. 144.

Judicial intervention is necessary because political checks are weak. Consequently, this Court has refused to accept state consent as a defense to commandeering claims. *New York*, 505 U.S. at 182 ("[T]he departure from the constitutional plan cannot be ratified by the 'consent' of state officials."). The anti-commandeering doctrine does not only protect states; by preserving federalism, it also protects individual liberty. *See* David E. Bernstein & Ilya Somin, *The Mainstreaming of Libertarian Constitutionalism*, 77 Law & Contemp. Probs. 43, 62 (2014).

This Court has also steadfastly refused to balance the values protected by the anti-commandeering doctrine against proffered federal interests. "No matter how powerful the federal interest involved, the Constitution simply does not give Congress the authority to require the States to regulate." *New York*, 505 U.S. at 178. "[T]he Constitution protects us from our own best intentions: It divides power among sovereigns and among branches of government precisely so that we may resist the temptation to concentrate power in one location as an expedient solution to the crisis of the day." *Id.* at 187. However pressing the national problem may seem, "a judiciary

that licensed extraconstitutional government . . . would, in the long run, be far worse." *Id.* at 187-88.

The federal government has plenty of options in its play book to address pressing issues without eroding the Constitution's structural protections for federalism. It can directly regulate the activity itself and preempt contrary state regulation. *See Geier v. Am. Honda Motor Co., Inc.*, 529 U.S. 861 (2000). It can give states a choice of cooperating or ceding an area to federal regulation. *See New York*, 505 U.S. at 167-68. Or it can use its spending power under appropriate circumstances to entice states to cooperate. *See Nat'l Fed'n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566, 2603 (2012). These approaches do not lead to the same problems because any state participation must be truly voluntary. *See id.*; Ernest Young, *Federalism as a Constitutional Principle*, 83 U. Cin. L. Rev. 1057, 1074 (2015) ("Congress must *persuade*, not command, States to participate in cooperative federalism schemes."). But the federal government cannot simply command states to regulate their citizens in furtherance of federal policy.

2. The Third Circuit's Decision Limits the Anti-Commandeering Doctrine and Undermines the Values It Protects

The Third Circuit's decision construes PASPA to compel states to maintain prohibitions against sports gambling. *N.C.A.A.*, 832 F.3d at 396. It hints that states may have some options to change their own prohibitions, but refuses to give any guidance as to what those may be. *Id.* at 402 ("We need not . . . articulate a line whereby a partial repeal of a sports wagering ban amounts to an authorization under

PASPA, if indeed such a line could be drawn."); *id.* at 407 (Vanaskie, J., dissenting) ("Noticeably, the majority does not explain why all partial repeals are not created equal or explain what distinguishes the 2014 Law from those partial repeals that pass muster."). The court's rationale, that a repeal is an implied authorization, "makes it clear that under PASPA as written, no repeal of any kind will evade the command that no State 'shall . . . authorize by law' sports gambling." *Id.* at 409 (Vanaskie, J., dissenting).

The Third Circuit's lack of guidance to states threatens state sovereignty and could lead to absurd results. As Judge Fuentes asked, in dissent, "[w]ould the State violate PASPA if it [first repealed all its existing prohibitions, then] later enacted limited restrictions regarding age requirements and places where wagering could occur?" *Id.* at 405 (Fuentes, J., dissenting). The unfortunate answer to Judge Fuentes' question is that no one knows.

Similarly, it is unclear whether the decision's odd interpretation of "authorize" extends beyond state legislatures. May state law enforcement officials focus limited resources on investigating and prosecuting only certain types of violations—for instance, bets involving minors or bets placed outside casinos and race tracks—without "authorizing" other gambling? Given this Court's insistence on clear rules where federal law intrudes on state sovereignty, the Third Circuit's lack of guidance is troubling. *See Atascadero State Hospital v. Scanlon*, 473 U.S. 234, 238-39 (1985) (clear statement rule applies to federal statutes that may intrude on areas of traditional state authority).

Rather than provide much needed clarity, the Third Circuit threw a curveball at New Jersey's

commandeering concerns. It distinguished *New York* on the grounds that PASPA requires states to maintain existing prohibitions not to enact new ones. *N.C.A.A.*, 832 F.3d at 401-02.[2] *New York* does not support this distinction. *See* Matthew D. Mills, *The Failure of the Professional and Amateur Sports Protection Act*, 16 U. Den. Sports & Ent. L.J. 215, 219 (2014) (whether the federal government compels states to adopt a policy or forbids states from repealing it, the effects on federalism are the same). Equally troubling, the court's decision is not consistent with the principles underlying the anti-commandeering doctrine. "[P]reventing the state from repealing an existing law is no different from forcing it to pass a new one; in either case, the state is being forced to regulate conduct that it prefers to leave unregulated." *Conant v. Walters*, 309 F.3d 629, 646 (9th Cir. 2002) (Kozinski, J., concurring); *see N.C.A.A. v. Governor of New Jersey*, 730 F.3d 208, 245 (3d Cir. 2013) (Vanaskie, J., concurring in part and dissenting in part).

Restricting the anti-commandeering doctrine to instances where Congress requires states to act undermines political accountability. Voters are just as likely to errantly blame state politicians, since the unpopular prohibition is imposed under state law. Coan, *supra* at 8. In either case, the state officials

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[2] The Third Circuit's reasoning bears a striking resemblance to the state consent defense that this Court rejected in *New York*. 505 U.S. at 182. A state's decision to enact state law prior to being commandeered could, at most, indicate that the state consented to it. Yet, as this Court recognized in *New York*, the Constitution's structural protections for federalism are too important to allow consensual violations to be ignored. *Id.* States cannot consent to a scheme that would violate the Constitution. Their ratification of the Constitution took away the states' ability to undermine it.

will be punished in subsequent elections, even though they would be powerless to change the policy. *Cf.* Christopher Carlberg, *Early to Bed for Federal Regulations: A New Attempt to Avoid "Midnight Regulations" and Its Effect on Political Accountability*, 77 Geo. Wash. L. Rev. 992, 1000 (2009) (explaining that "lame duck" politicians are not politically accountable because they no longer fear being voted out of office). Similarly, federal politicians could avoid accountability by shifting blame to hapless state officials. *Id.*

3. The Third Circuit's Decision Would Carve a Loophole into the Anti-Commandeering Doctrine

The Third Circuit's narrow interpretation of the anti-commandeering doctrine could impact far more than sports gambling. It creates a significant loophole in the doctrine that would allow the federal government to overextend its constitutional authority. This could fundamentally alter the relationship between the federal government and the states.

For instance, the federal government could compel states to continue implementing education policies well after they have proven unpopular. Previously, the need to convince states to cooperate has given them significant leverage to influence federal policy. *See* Young, *supra* at 1074-75 (explaining that state resistence to federal education policy forced a federal agency to change its requirements).

If, once adopted, the federal government could compel states to continue to implement particular policies, the political consequences could be far reaching. The federal government could dictate

curricula or testing requirements in those states that previously embraced the federal policy. *But see Milliken v. Bradley*, 418 U.S. 717, 741-42 (1974) (recognizing education as an area of traditional state and local control). It could also require states to continue enforcing their current bathroom policies, whatever those may be. *Cf. G.G. ex rel. Grimm v. Gloucester Cnty. Sch. Bd.*, 822 F.3d 709 (4th Cir. 2016), *cert. granted*, No. 16-273 (Oct. 28, 2016).

Limiting the anti-commandeering doctrine could also have severe repercussions in environmental policy. Federal-state cooperation on environmental regulation is particularly useful because states have greater local knowledge and more available enforcement officers. *See* Richard B. Stewart, *Pyramids of Sacrifice? Problems of Federalism in Mandating State Implementation of National Environmental Policy*, 86 Yale L.J. 1196, 1243-50 (1977). But if the federal government could indefinitely impose its will on states after they initially agree, that would threaten these cooperative federalism arrangements, with far reaching affects. *Cf.* Robert V. Percival, *Environmental Federalism: Historical Roots and Contemporary Models*, 54 Md. L. Rev. 1141, 1174 (1995).

The decision below invites these problems. For instance, if the federal government used its spending power to entice a state to adopt federal policy as its own, it could then forbid the state from ever changing its policy. When the state cried foul, the federal government could respond that, despite all appearances, the state isn't being commandeered because it was not compelled to adopt the policy originally. *See N.C.A.A.*, 832 F.3d at 401-02. Obviously, a state would be extremely wary to cooperate in

implementing federal environmental policy if it knows that, once it does, it may be permanently giving up its sovereignty. *Cf.* Stewart, *supra* at 1243-50. That would make cooperative federalism arrangements far more treacherous, not only undermining federalism but also the policy goals that these arrangements advance.

Perhaps the most politically salient issue which this narrow reading of the anti-commandeering doctrine could affect is marijuana legalization. Numerous states have experimented with decriminalizing marijuana, despite the federal prohibition against possession and distribution.[3] Erwin Chemerinksy, et al., *Cooperative Federalism and Marijuana Regulation*, 62 UCLA L. Rev. 74, 81-89 (2015). This state experimentation is only possible because "the federal government cannot require states to enact *or maintain on the books* any laws prohibiting marijuana." *Id.* at 102-03 (emphasis added); *see* Austin Raynor, *The New State Sovereignty Movement*, 90 Ind. L.J. 613, 626 (2015); Sam Kamin, *Cooperative Federalism and State Marijuana Regulation*, 85 U. Colo. L. Rev. 1105, 1107 (2014). But under the Third Circuit's rationale, the federal government is free to stop this process in its tracks, by forbidding states from any further liberalization. Jacob Sullum, *Victories for Eight of Nine Marijuana Initiatives Hasten the Collapse of Prohibition*, Reason.com (Nov. 9, 2016)[4]

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[3] Unlike the Controlled Substances Act, PASPA does not prohibit sports gambling under federal law. Instead, it operates directly on states, by forbidding them from authorizing sports gambling. 28 U.S.C. § 3702.

[4] http://reason.com/blog/2016/11/09/victories-for-eight-of-nine-marijuana-in

(eight additional states liberalized their marijuana laws in the most recent elections).

B. The Questions of Federal Law Presented By This Case Are Important Because of the Size and Scope of the Potential Gambling Market Affected by PASPA

The constitutionality and reach of PASPA also raises significant practical concerns. It affects numerous types of sports gambling, deprives states of tax revenue, and increases the size of the black market for sports gambling.

Since PASPA was enacted, interest in sports gambling has increased. Most recently, there has been a growing market for fantasy sports, including daily fantasy sports leagues that award substantial prizes or cash winnings. *See* Steven Titch & Michelle Minton, *Game Changer: Rethinking Online Gambling Regulation in the Age of Daily Fantasy Sports*, Comp. Enter. Inst. Issue Analysis (May 2016).[5] Since this market began in 2006, daily fantasy sports has generated approximately $3 billion in entry fees, from nearly 41 million players in the United States and Canada. *See id.* at 1. Although nonexistent when PASPA was enacted, this fantasy gaming may be subject to the statute's restrictions. *See* Daniel Wallach, *No Question, PASPA Applies to Daily Fantasy Sports*, Sports Law Blog (Jan. 11, 2016);[6] Andy Moore, *Does State Regulation of Fantasy Sports Violate*

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[5] https://cei.org/sites/default/files/Steven%20Titch%20and%2Michelle%20Minton%20-%20Game%20Changer.pdf

[6] http://sports-law.blogspot.com/2016/01/no-question-paspa-applies-to-daily.html

PASPA?, Law360.com (Dec. 8, 2015).[7] If so, states may be hamstrung in their ability to regulate it effectively. If a state imposes some regulations on daily fantasy sports, will it run afoul of PASPA by impliedly "authorizing" the activity that's allowed? According to the Massachusetts Gaming Commission, regulation of this new market is necessary to protect the interests of participants and provide predictability to participating companies. Massachusetts Gaming Commission, *White Paper on Daily Fantasy Sports* 18-20 (Jan. 11, 2016).[8] However, PASPA, which the white paper describes as "a peculiar and vague federal statute," leaves states unsure what, if anything, they can do to protect their residents. *Id.* at 15-16.

The decision below impacts states' tax revenues and ability to address the black market for sports gambling. These are precisely the concerns that led New Jersey to reform its own laws. While legally placed bets were approximately $232 million in 2015, the illegal sports gambling market is much larger. *See* Jonathan Stempel, *New Jersey sports betting law struck down by U.S. appeals court*, Reuters.com (Aug. 9, 2016)[9] ($232 million in legally placed bets); American Gaming Association, Press Release, *Americans to Bet $4.2 Billion on Super Bowl 50*

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[7] http://www.law360.com/articles/734823/does-state-regulation-of-fantasy-sports-violate-paspa

[8] http://massgaming.com/wp-content/uploads/MGC-White-Paper-on-Daily-Fantasy-Sports-1-11-16.pdf

[9] http://www.reuters.com/article/us-usa-gambling-new-jersey-idUSKCN10K1FF

(Jan. 27, 2016)[10] (nearly 97% of sports bets, worth more than $100 billion, are wagered illegally); National Gambling Impact Study Commission, *Final Report* (June 1999)[11] (sports gambling is the most widespread and popular form of gambling, with an illegal market ranging from $80 billion to $380 billion annually). By pushing this market underground, PASPA undermines states' ability to tax it.

The size of this illegal market also makes it more difficult for states to investigate and prosecute truly bad actors. *See* Dr. David Forrest & Rick Parry, *The Key to Sports Integrity in the United States: Legalized, Regulated Sports Betting* (Sept. 27, 2016).[12] By denying states needed flexibility to address these impacts to their residents and economies, the Third Circuit's decision complicates efforts to combat abusive activities.

These practical impacts are not limited to New Jersey, but will affect states and their economies nationwide. As the leaders of several of the plaintiffs in this case have candidly acknowledged, the popularity of sports gambling and fantasy sports make it a question of when, not if, other states will follow New Jersey's lead. *See, e.g.*, David Purdum, *Adam Silver: Betting is 'inevitable'*, ESPN.com (Sept. 5,

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[10] https://www.americangaming.org/newsroom/press-releasess/americans-bet-42-billion-super-bowl-50

[11] https://babel.hathitrust.org/cgi/pt?id=pur1.32754071462216;view=1up;seq=34

[12] https://www.americangaming.org/sites/default/files/FINAL%20SPORTS%20INTEGRITY%20REPORT.pdf

2014)[13] (quoting NBA Commissioner Adam Silver as predicting "[i]t's inevitable that . . . there will be legalized sports betting in more states than Nevada").

CONCLUSION

The judge's role has famously been analogized to an umpire calling balls and strikes. In this case, the Court is being asked to define the strike zone against which federal laws that appear to commandeer states will be judged. This question is of immense doctrinal and practical importance. The boundary must be clearly defined if the anti-commandeering doctrine is going to continue to protect federalism and individual liberty. While it took the Cubs 108 years to win another World Series, this Court need not wait that long to clarify this important doctrinal area. The petition for certiorari should be granted so that this Court can resolve the issue and provide needed guidance to states and the lower courts.

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Respectfully submitted,

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[13] http://www.espn.com/espn/betting/story/_/id/11466692/nba-commissioner-adam-silver-says-sports-betting-inevitable